UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CUNG LE, et al., Plaintiffs, vs. ZUFFA, LLC, d/b/a Ultimate Fighting Championship and UFC, Defendants.	Case No. 2:15-cv-01045-RFB-BNW Las Vegas, Nevada Friday, November 21, 2023 11:36 a.m. MOTION HEARING

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

THE HONORABLE RICHARD F. BOULWARE, II,
UNITED STATES DISTRICT JUDGE

APPEARANCES: See Pages 2 and 3

COURT REPORTER: Patricia L. Ganci, RMR, CRR
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

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LAS VEGAS, NEVADA; FRIDAY, NOVEMBER 21, 2023; 11:36 A.M.

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P R O C E E D I N G S

THE COURT: Please be seated.

COURTROOM ADMINISTRATOR: The matter now before the Court is Le versus Zuffa, Inc., Case Number 2:15-cv-1045-RFB-BNW. Counsel, please make your appearances beginning with the plaintiff.

MR. CRAMER: Good morning, Your Honor. Eric Cramer for the plaintiffs.

MR. MADDEN: Good morning, Your Honor. Patrick Madden for the plaintiffs.

MR. SAVERI: Good morning, Your Honor. Joseph Saveri for the plaintiffs.

MR. SPRINGMEYER: Good morning, Your Honor. Don Springmeyer for the plaintiffs.

THE COURT: Good morning.

MR. ISAACSON: Good morning, Your Honor. It's Bill Isaacson from Paul Weiss for the defendant.

MR. YATES: Good morning, Your Honor. Chris Yates from Latham and Watkins for the Defendant.

MS. PHILLIPS: Good morning, Your Honor. Jessica Phillips from Paul Weiss for the defendant.

MR. WILLIAMS: And good morning, Your Honor. Colby Williams, Campbell and Williams, on behalf of the defendants.

THE COURT: Good morning. We have a couple of motions that we are going to address here. So let me get straight to it here.

Mr. Isaacson, are you going to be arguing these motions?

MR. ISAACSON: No, Mr. Yates will be arguing the motion to reopen discovery.

THE COURT: Okay. Well, why don't we have Mr. Yates come up.

So, Mr. Yates, my basic question to you is this. You've had years. I got no motion to reopen discovery. How is that diligence? How is this not a strategic decision that you thought you were going to prevail in a class certification or on the appeal and you didn't, and your sat on your hands and didn't file a motion to reopen discovery, despite knowing all of this information?

MR. YATES: Your Honor, we moved to reopen discovery at the earliest feasible time --

THE COURT: No, no. Let me ask you a question. At the time I said I was going to announce my decision, I said there was going to be a delay while I looked at and waited for the *Olean* decision. Was there anything at that time that prevented you from filing a motion to reopen discovery?

MR. YATES: Your Honor, I believe there was because, Your Honor, what was pending at the time was a motion to certify

both the damages class and an injunctive class. The plaintiffs admit there was going to have to be discovery on the injunctive relief class. Then they filed the --

THE COURT: My question, though, I'm going to be very direct, was there any legal impediment to you filing a motion to reopen discovery at that time? Was there anything that stopped you, that prevented you, from filing such a motion, other than making a decision about where you thought you were, right? There was no order from this Court or anything like that that said you couldn't file a motion to reopen discovery, right?

MR. YATES: There was no such order that had been issued by the Court. However, as a practical matter, Your Honor -- Your Honor was considering the class certification decision. And part of the class certification decision was injunctive relief, which necessarily the plaintiffs admit was going to require additional discovery. They then filed the Johnson case. As part of our motion to dismiss in the Johnson case, we say we need discovery, including in Le. In our reply brief we say the same thing. We say the cases should be consolidated. That would be the most efficient way to go. And we say that discovery should be reopened in Le. We then --

THE COURT: So why not file a motion to reopen? I mean, Le is the case. And so I guess what I'm pressing you on is -- and I'm sure, counsel, you've done it multiple times -- you file a motion to reopen in the case you want to reopen. I

mean, it's actually a fairly straightforward motion. You've done it here, right. You could have done it earlier.

And I understand that there might have been, quote/unquote, practical considerations, but, again, that's not necessarily something that establishes good cause or would be excusable neglect if you could have done it and you made a strategic decision not to do it.

I'm trying to understand why I should consider your practical argument when, in fact, in this case that we're talking about, Le, there was no impediment at all to filing a motion that you filed recently years ago.

MR. YATES: Well, Your Honor gave us leave to file the motion on October 24th, which is what we did. The cases speak to providing notice to the Court, which we did, of the need for further discovery. We did that multiple times for years. The plaintiffs in their opposition claimed that we were not diligent. We were diligent. Your Honor, there's nothing more diligent that we could have done.

Again, injunctive relief was necessarily going to require additional discovery. Everyone agrees on that. And so the first -- the first time that we could, when we were filing a motion to dismiss in the Johnson case, we notified Your Honor, put the plaintiffs on notice, and then met and conferred with them about the need for additional discovery in Le.

Frankly, it would be -- Your Honor, it would be error

-- it would be error not to give us this discovery because we're talking about a situation where they're -- the plaintiffs are trying to silo the class period. The Courts, the *Geneva Pharmaceuticals* and the Ninth Circuit, has said that entry even after the class period is relevant in a monopoly or monopsony case.

THE COURT: Well, counsel, you weren't here for any of the expert advice. I didn't hear any of the experts say that they needed data from after the class period to be able to prove their theory within the class period. And, in fact, I questioned them quite extensively about that.

MR. YATES: Sure.

THE COURT: They did not say, "We believe based upon our theories and our testimony that we need information after the class period to establish what would be the monopsony power within the class period." I didn't hear anything from the experts that said that. I went back over their testimony in preparation for my hearing today because I wanted to make sure that I didn't miss anything.

We had extensive testimony from experts, and I didn't hear any of them offer a theory as it relates to establishing monopsony power that you need to wait two or three years after the relevant period to provide that information. And, in fact, we allowed for and I allowed for them to supplement the information. And I didn't hear anything from those experts that

would suggest to me, because we're moving a little bit into relevance, but would suggest to me that somehow the information that you're now seeking to obtain would be relevant to the determination of a monopsony within the class period.

MR. YATES: Well, I believe -- I believe the experts did talk about entry and they talked about the growth of competitors. And what's happened -- what's happened since the class period is there's been additional entry. PFL has entered, and of course the plaintiffs -- I mean, the experts can't predict exactly what's going to happen in the future. At the time everyone was thinking about the class period. Your Honor was holding hearings in 2018 and 2019. No one knew that it was going to be four years before class certification was decided.

THE COURT: But I guess my question, counsel, is this. If their theories or models as relates to monopsony were based upon years of econometric study that said one of the best ways for us to understand a monopsony is to look two or three afterwards because it affects our lag, that would be one thing. Then there would be potentially a basis for me to consider that. They didn't say that. That's what I'm saying to you.

They didn't say, "If we look at how we study monopsonies, we typically look two or three years after a period for a lag." They didn't say that that was the basis for their theories. And that's why I'm saying to you it would be one thing if it was in the information that would be relevant, but

if they didn't say that, including your own experts, why would I find this to be relevant?

MR. YATES: Well, because the Ninth Circuit and other Courts say it's relevant, Your Honor.

THE COURT: Well, yeah, that argument, counsel, is not going to work for me here. I'm talking about my case here specifically.

MR. YATES: Well --

THE COURT: I decided this on my case already. Look, the Ninth Circuit has actually already looked at my certification order, right. They didn't actually allow for an appeal on that order, and that order went through extensively this theory. So you're going to have to give me a reason why within the record that's here, because each case is unique, as to why, here, there is evidence or expert advice that would somehow suggest that information beyond the class period is relevant for determining monopsony power within the class period.

MR. YATES: Because it took four years for Your Honor to decide class certification and there has been substantial entry and expansion by competitors during that period, which as a matter of law, if you look at *Rebel Oil*, if you look at the *Syufy* case, if you look at the *Geneva Pharmaceuticals* case, must be considered because current market conditions must be considered when evaluating both market power and monopsony and

monopoly power. That is -- that is fundamental.

And of course, again, no one thought it was going to take four years for class certification to be decided. The experts did point to at the time PFL coming in, and they -- the plaintiffs said they're just minor league. PFL doesn't think they're minor league today. No one thinks they're minor league. What does that mean? That means that the plaintiffs' theory of the case is dead wrong.

THE COURT: But my question to you is, I want to go back to this, can you point to me the portions of the record here where your experts said it's important for us to consider information beyond the class period to determine whether or not there's monopsony power within the class period? Where in the record do your own experts say that?

MR. YATES: Your Honor, I don't -- I didn't go back and re-review the entire record to prepare for this hearing. However, my recollection is that they were talking about entry. They were talking about competitors coming into the marketplace. They were talking about PFL, which had just entered at the -- just shortly before the class certification hearing. That's part of the reason that Your Honor allowed supplemental expert reports, which I think counsels again in favor of reopening discovery here or, at the very least, let us take some discovery in Johnson that we can then use in the lead trial.

Otherwise, we're going to have a trial where the jury

is going to sit there and say, "Wow. I don't know what has happened since 2017." And the reality is --

THE COURT: Well, what if I tell them that's not relevant? First of all, I may decide that that's actually not relevant. Because the reason why I'm asking you, counsel, about the expert advice is, in order for me to allow evidence, it would have to be relevant. And I'm saying this to you because when we had the hearings, and that's why I'm focusing on the record, I did go back and read their expert testimony explicitly to figure out whether or not what you were offering now was something that they suggested would be necessary for their modeling to make the determination. Because as it relates to evidence, right, it's important for the Court to determine what's relevant.

The fact of the matter is I may very well find, look, that's actually misleading to the jury. The inquiry is during the class period did Zuffa have monopsony power, and to the extent that there's evidence offered outside of the class period, there would have to be relevance for that as it relates to theories about monopsony power related to this case. And that's why, again, I'm focussed on the experts because that's where we heard the testimony about monopsony power.

MR. YATES: And respectfully, Your Honor, if Your Honor were to exclude evidence of current market conditions, that would be an error of law.

THE COURT: You said that before. And I know that that's a strategic argument people make, but you can say that.

MR. YATES: Well --

THE COURT: And you all said the same thing about my class certification, that that would be error, too. And you are free to, right, make that argument. I'm trying to actually ask you a question related to the record. Simply saying to me it would be error is actually not a particularly productive use of our time here, counsel. I would rather focus on what you think is your best argument about this.

Because, again, I spent a lot of time preparing for this today and I'm focussed on what it is that would give you -- what it is that's necessary. I want to find out why this is -- I should allow this. And I want to focus on what parts of the monopsony theory that you've talked about. One, you say entry. Two, you say competitors. But there was information about competitors and entry during the period. Why isn't that enough?

MR. YATES: Because the continued entry of competitors demonstrates there are not barriers to entry and that something else must be accounting for what plaintiffs call wrongful anticompetitive conduct. Because where you've got competitors who are entering and growing and who are saying that we actually can get any fighter we want, it proves that the alleged 30-month contracts are not barriers to entry.

These competitors -- and our experts did talk about

entry. They did talk about expansion. That's only continued. That has only continued after the class period and after Your Honor had the class certification hearing.

What has happened is that these competitors have continued to grow, even though the plaintiffs say that the contracts are virtually the same out -- after the class period. So that's classic evidence which shows that the plaintiffs' theory is wrong, that there is no monopsony power. And, frankly, you know, the entry -- entry and expansion are the key things in most monopoly and monopsony cases.

THE COURT: So I want to ask you a question about that.

MR. YATES: Sure.

THE COURT: One is are you arguing that Zuffa still doesn't still -- because you can have competitors and still have market power, right. It doesn't -- it may mean that your market power is lessened, but the existence of a competitor -- even your experts acknowledged, the existence of a competitor does not itself in fact negate the potential for market power and to be able to exercise a monopsony as relates to wages. And in fact the threshold that your experts identified, which is like around 30 or 40 percent, is well below what the -- what the amount of market power is here.

And so one of the arguments that I was -- one of the issues that I wanted to raise with you is about, even if this were the case that they're competitors -- and we haven't even

gotten to the issue of changes in behavior, but assuming that everything is the same, why would that matter if Zuffa is still potentially or at least allegedly exercising market power?

MR. YATES: Well, because we obviously vigorously dispute Dr. Singer's calculations of market share and market power. We think they're wrong.

You know, Dr. Singer's opinions have been excluded three times in three major cases since the class certification hearings as unreliable. So we don't think that the market share calculations that Dr. Singer provided and which ultimately formed the basis, I agree, for Your Honor's class certification decision which obviously did not decide these issues as a matter of fact --

THE COURT: Right.

MR. YATES: -- that's going to be for trial. You know, we vigorously dispute those market share calculations.

So entry and expansion by competitors is exactly what needs to be tested to see if there is actual monopoly or monopsony power, as the plaintiffs allege, or if something different is going on here.

Our position -- we've said it all along, our position is Zuffa created this sport. Zuffa created this sport. It's natural that it had a head start for a while. Competitors sat back and waited for a while. And what did they do? They said, "Okay. Zuffa's made this sport mainstream. It's now on TV

networks. Sponsors like it now. So we're going to get in."

And what's happened with PFL? PFL, you know, at the time of the class certification hearings were just getting going. And what's happened since then? They've exploded. They've got hundreds of millions of dollars of new money coming in to their -- to their business.

That is classic evidence of entry and the fact that there are not durable barriers to entry.

THE COURT: So I guess again we go back to you say it's classic evidence, but I don't have experts telling me that. I didn't have your experts saying to me classic evidence of this is -- again, that's why I go back to this lag period, but let me ask you another question.

Why couldn't the Court simply say, "Look, that's attributed to change in behavior. Zuffa no longer took" -- and, again, allegedly because, again, I know these issues as a matter of fact is going to be for the jury to decide. But why wouldn't I find, look, you know what, Zuffa changed its strategy. It no longer decided that it was going to acquire or force out competitors because they recognize the potential for a case like this one to proceed. This case had already -- of course had already been filed by that time. Why wouldn't that be potentially something that the Court should consider as it relates to the information that you provide?

MR. YATES: I just don't think -- I mean, I don't --

that's obviously -- you're making speculation. There's speculation there, Your Honor. That's not based on any fact. I'm sure the plaintiffs will make exactly that argument, if Your Honor allows the discovery, which we respectfully submit should be allowed here.

This is evidence and our experts -- going back to Your Honor's previous question, our experts did talk about entry and expansion. And this evidence, it proves that what the plaintiffs were saying at the time, which is all of these competitors are minor league, is not true. It is not true. If you look just at the quotes we put in our reply brief, all of the competitors think that they have access to all of the athletes that they need to put on viable MMA promotions.

THE COURT: I guess my question is, do I have in this record evidence from experts that would indicate that the effect of these new competitors is to potentially eliminate the alleged market power that existed? Even if you disagree with it, right, there is a dispute here and the Court considered it and it's part of the Court's certification order. Do you have expert testimony that would suggest that this entry data would mean that Zuffa is no longer allegedly even the market dominant power that Dr. Singer said that they were?

MR. YATES: I believe Dr. Topel addressed that. He was talking about entry and expansion, and this is a continuation of that testimony. Four-plus years have elapsed since that

testimony. Obviously competitors have continued to grow and expand, which is what we're going to argue to the jury, ultimately, after -- after hopefully Your Honor allows us to get into discovery on this. We're going to argue to the jury that establishes that these contracts that the plaintiffs say and Dr. Singer contends are exclusionary are nothing of the sort.

THE COURT: Well, let me ask you a separate question because there's a separate issue about the trial date here. What if I were to say to you, "Fine. I'll allow you discovery, but it has to be done by April 8th so we can go to trial. I'm not going to move that date," what would you say to me?

MR. YATES: I'd say fine. Your Honor, I did it last year. My wife didn't love the fact that I was gone for a lot of the holidays and -- but that's what we do as trial lawyers.

THE COURT: I'm just saying that because one of the arguments the plaintiffs make --

MR. YATES: Yeah.

THE COURT: -- obviously is that this is a pretextual argument about the trial date. And, again, I haven't decided the issue of the motion for summary judgment, but I'm saying that because they've raised this as an issue about moving the trial date. And, as you know, the Court has to at least consider that in the context --

MR. YATES: Of course.

THE COURT: -- of making this determination.

MR. YATES: Of course.

THE COURT: Right. And they've argued that you have said, "Oh, we need four to six months for this to happen. We can't complete it in the time that would be necessary for a trial to go forward on that date." And so they're arguing that you're essentially trying to delay, and I wanted to give you an opportunity to be able to directly address that by talking about what you think that is going to be accomplished before the trial date.

MR. YATES: I -- I personally did this, as I said, last year. We went from discovery opening on December 21 to a trial in the middle of April. So about the same amount of time, Your Honor. This was in the District of Delaware. It's a merger case. Merger cases, typically, you do all of the discovery, including expert discovery, in four or five months. It can be done. It can be done. I am -- I would be --

THE COURT: So let me ask you a question about that.

MR. YATES: Yeah.

THE COURT: So what is it -- again, because the plaintiffs will argue that you're basically seeking open-ended discovery. And I guess my question to you is it seems to me that really what you're asking for is to be allowed to supplement your experts' testimony. I mean, that seems to me like what you're asking to do. I don't know what else there would be, but supplement their testimony in terms of their

expert opinions based upon --

MR. YATES: Sure.

THE COURT: -- subsequent market data, right.

MR. YATES: That would be part of it, Your Honor. I think that, I mean, to me the key thing here would be to get the testimony of the competitors, get documents from the competitors. We've already started that process in the Johnson case. Once Your Honor allowed discovery to open in Johnson, we've subpoenaed them in Johnson. But -- and the same subpoenas, you know, the same discovery could and should be used in Le.

So we would want testimony from the competitors after getting you their documents --

THE COURT: What would you need beyond their relative market position? So, in other words, if you wanted to get testimony --

MR. YATES: Sure.

THE COURT: -- what you've talked about is entry and expansion. You don't really need anything from them directly related to that, other than potentially basic numbers about, I guess, their revenue or things like that. But it doesn't seem to me that that's extensive internal information. There's some information about, sort of, again relative market share and power. But tell me a little bit about what information you believe that you would need --

MR. YATES: Sure.

THE COURT: -- from these third parties because certainly that can hold things up as it relates to a trial date.

MR. YATES: We have already been meeting and conferring with Bellator and PFL and one other entity that we've subpoenaed in the Johnson case. They -- they've indicated they're willing to produce documents once a protective order is entered. That has stalled things because the plaintiffs sat on our -- our protective order for a period of weeks.

THE COURT: I'm sorry, but what -- again, counsel, what documents would you --

MR. YATES: Sure.

THE COURT: -- are you trying to obtain?

MR. YATES: Sure. I mean, we would want their -- we would want their strategic plans. We'd want their documents regarding their ability -- their efforts to recruit fighters, their efforts to develop fighters, and the like. Because, again, our theory of the case is that Zuffa's allegedly exclusionary contracts do not actually exclude anyone and that these competitors are able to put on viable MMA promotions.

Obviously Your Honor mentioned market share data. We would obviously want that. We would want their strategic plans to see what they're saying internally and also what they're saying to investors because as I mentioned PFL, for example, PFL just got $100 million from the Kingdom of Saudi Arabia

Investment Fund and $400 million from a variety of other investors. I can bet you dollars to doughnuts that there were some documents prepared that were submitted to those potential investors about their growth opportunities and how they're not impeded at all by UFC. So that's the kind of thing.

And then I think we take in addition --

THE COURT: What about UFC information?

MR. YATES: Sure. We are ready, willing, and able to update it.

THE COURT: Right, because we spent a lot of time with discovery orders related to protective orders regarding statements, right. And I can imagine huge fights about conversations about what to do in the face of the lawsuit and whether they're privileged or not, whether or not there's conduct that we should change because of the lawsuit, which would be potentially relevant, and we'd have this back and forth.

And so we had a lot of discovery practice in this case for the three-year discovery period related to protective orders and what information would be provided. Do you actually believe that all of that could also be accomplished in this period of time?

MR. YATES: I would certainly hope so. For better or for worse, Your Honor, obviously I wasn't counsel in that time period so I don't know all of the details and the ins and outs.

THE COURT: Right.

MR. YATES: But in my experience what happens when you've got this kind of period where you have done discovery and when you either reopen it or there's a new case is that counsel take a lot of learnings from what the Court did in terms of deciding issues either in the first case or -- or earlier in the case. And so I would fully expect that we could get things done. It requires cooperation on both sides. That's the reality.

These merger cases are able to go to trial fast because both sides, both the Government and -- and the merging parties, are motivated to get things done. Zuffa is motivated to get this discovery done. We will commit to getting it done.

Again, you know, beyond the competitors, I think there would be some depositions of additional fighters, perhaps, managers or agents. And, yes, I mean, I think Your Honor -- Your Honor's right. I think there would be a short period to supplement expert reports. It's going to be nothing like the -- the -- you know, the expert report period that you had before. There's just not time for it, but that's okay.

THE COURT: Okay. Hold on a moment.

MR. YATES: Sure. Certainly, Your Honor.

THE COURT: And I wanted just to go back to one thing, Mr. -- is it Yates? Is that right?

MR. YATES: Yates. Thank you, Your Honor.

THE COURT: Mr. Yates, what case can you point to me that you believe provides the clearest example of a Court reopening discovery as it relates to establishing monopsony power or monopoly power in a class period post the class period?

So, in other words, the cases that you've cited I don't know that they are directly on point, but, again, we don't have that many monopsony cases --

MR. YATES: Sure.

THE COURT: -- period. But I want to think about and look at what case you think best legally supports your position as it relates to the relevance of the information. And I say that because from my standpoint, Mr. Yates, if the information isn't relevant, then obviously there's no reason or basis to reopen the discovery. That's certainly a threshold issue. Apart from -- and we can disagree about potential issues of diligence or not. Certainly if it's not relevant, that doesn't even matter because then we don't reopen discovery.

So tell me what you think is the best legal support for that position. Because, again, I've looked at the expert record here, but I want to hear from you because I want to give you an opportunity to make your best legal argument for that.

MR. YATES: Sure. I mean, I think the case that is the closest, and then I'll come back to some Ninth Circuit authorities, the *Geneva Pharmaceuticals* case, which is Judge Cote out of the Southern District of New York, very experienced

judge.

THE COURT: I know why you're quoting Judge Cote to me. I don't know if everyone else knows, but I clerked for Judge Cote, obviously, in the Southern District of New York.

MR. YATES: I understand.

THE COURT: Right. Of course respect her legal acumen, but so --

MR. YATES: I think this was after your clerkship, Your Honor, but --

THE COURT: Right. No, it was. But tell me a little bit about why that is and why it's relevant here. Because, again, Mr. Yates, I have focussed quite a bit on the experts here because, I mean, we spent a lot of time with that -- as you can see, I spent a lot of time with that in my order which goes into very, very significant detail about the experts' opinions. We spent a lot of time with that.

And so I'm focussed on how the legal arguments would work with the expert testimony here. So why don't you tell me about why you think that case is compelling here.

MR. YATES: Sure. That case is filed in I believe 1998, and there's allegedly exclusionary conduct. It goes up on appeal and then comes back down from the Second Circuit. And what does Judge Cote allow? The plaintiffs make the same argument -- the plaintiffs in that case make the same arguments as the plaintiffs in this case, which is, oh, evidence of what

happens after the alleged wrongful conduct cannot be considered. Judge Cote categorically rejects that, categorically. I mean, I can quote it to Your Honor if Your Honor gives me one moment.

She says: "The plaintiffs have urged that the entry of USL Laboratories in 2003 and Gen Pharm in 2004" -- remember, the case is filed in 1998 -- quote, can easily be dismissed as irrelevant because their entry occurred five or more years after plaintiff's entry and defendant's unlawful conduct which delayed plaintiff's entry.

Then she says, quote, The time period for analyzing the ability of a competitor to enter the marketplace, however, is not tied to the date of a defendant's alleged unlawful conduct.

And then if Your Honor looks at the *Rebel Oil* case and the *Syufy* case out of the Ninth Circuit, they both speak -- and there's another case that we cited in our briefing from the Ninth Circuit as well -- they all speak to the fact that, you know, the plaintiffs don't get to cabin in the time period and say this is the only time period that's relevant.

If, as happened here, there's been a substantial delay, not of Zuffa's choice or making, later information about current competitive market conditions is relevant. Entry and expansion is quintessentially relevant information because it proves that there are not barriers to entry.

And even if everything Dr. Singer said is correct about market share -- and we obviously disagree with that

strenuously -- if there are not barriers to entry, then judgment as a matter of law should be entered for Zuffa.

THE COURT: Okay.

MR. YATES: Okay.

THE COURT: Thank you, Mr. Yates.

MR. YATES: Thank you, Your Honor.

MR. CRAMER: Good morning, Your Honor.

THE COURT: Good morning, Mr. Cramer.

MR. CRAMER: Is there anything in particular you would like me to cover?

THE COURT: So I want to focus a little bit on the issue of relevance because, as I said to Mr. Yates, the issue really for me is relevance. And in looking at the record here, I'm not sure that the record supports a finding that this isn't relevant. I mean, there's certain issues of diligence, but assuming that we can set aside the issue of diligence, for the moment, I want you to focus on relevance because that relates to the record itself.

MR. CRAMER: Yeah. Thank you, Your Honor.

So we think it's pretty clear that nothing that happens in 2021 or 2022 can -- can show that Zuffa did not have market power from 2010 to 2017. And the cases that Zuffa cites, they talk about *Geneva*. Well, it's true that in *Geneva* the Court allowed discovery after a certain period of time, but the reason why the Court decided that was relevant was two things that are

not at issue here. Number one, the plaintiffs had sought damages projected forward during the period for which the defendant wanted discovery. So the Court said, "Okay. Well, the plaintiffs are relying upon projections for this period, and we should probably allow to see what actually happened in the market rather than rely upon projections."

But of course, here, plaintiffs' damages end in June 2017. We're not seeking damages for anything that happens in 2018 or 2019 or 2020. Our damages end. That's one reason why *Geneva* is not relevant.

The second reason, and this is the reason why all of the cases they cite are not relevant, is that in each of those cases that Zuffa cites there was -- that the defendant came in, the movant came in, and said, "Your Honor, there was a major change in the trend." Most of these cases are attempted monopolization cases that they're citing. Most of these cases the market power that was alleged was fleeting. And they came in and said, "You know there was a major change in the trend." And in *Geneva*, there was a huge change in the trend.

And what the defendant said is, "What this trend shows is that the relevant market that the plaintiffs are showing doesn't make sense because there's all kinds of substitution going on. And the trend changed."

Same thing in the other cases that Zuffa cites. All of them talk about a changed trend. Zuffa cites the Ninth Circuit.

They cite the *Pomona* case, for example. Let's talk about *Pomona*. What *Pomona* said was that a party who wanted some very targeted discovery relating to a single issue in a single expert report, they should be allowed to update that expert report because what happened was the expert relied upon some studies and those studies were updated. And the Court didn't allow the expert to update those studies. The Ninth Circuit said the Court should have allowed the expert to update those studies.

What Zuffa wants here is nothing like that. And they have not come in with any evidence of a change in trend. What they have said is what they have always said, competition is just around the corner. They point to what they call two new entrants. Who are their two new entrants in the six years after 2017? PFL. Is that really a new entrant? They just bought World Series of Fighting, re-branded it, and tried do the same thing again. They point to Bellator, which they've already called and are currently calling a feeder league.

It's interesting that Mr. Yates cites the discovery he wants from what these so-called competitors are telling their investors. What did Zuffa just tell their investors about the relevance, the importance of these competitors? What Zuffa just told their investors, which they have to tell the truth to, they can't say material falsehoods to their investors. Zuffa -- not Zuffa actually. TKO, Zuffa's owners -- Zuffa's owner, CFO, just said that all of these competitors, in particular Bellator and

PFL, they're feeder leagues. They're like the XFL to the NFL. That's what Zuffa is telling their investors and the public. There is no trend towards more competition.

And, second, in all of the cases that Zuffa cites they actually come in and say there is a change in trend. Has Zuffa or Dr. Topel or any of their experts said that market share or market power has declined post 2017? No, they don't even claim that.

Dr. Singer based on publicly-available information actually did a study. He looked. He took the headliner market, which he used during the class period, and he used publicly-available information. And what he showed is that in the headliner market between 2017 and 2023, UFC's market share rose from 90 percent to 93 percent. And why is that important? Because the headliner market, that's where the money is. That's where the power is. Those are the fighters that generate the revenues.

And what -- the only evidence in the record about market share and trend is that Zuffa's power rose after 2017. It did not fall. Zuffa points to the growth -- supposed growth of PFL and Bellator, but it ignores its own growth. Its revenues doubled between 2017 and 2023. Wage share has fallen, reportedly, between 2017 and 2023.

Moreover, what Zuffa wants is basically a complete redo because they say they want discovery. They served subpoenas on

11 competitors in Johnson. Those subpoenas are extremely broad. They asked for evidence from 2006 to 2023.

When they're going to get all of that, we don't know. We've just learned today that there were two out of the 11 meet and confers. When is that evidence going to come?

But even if that evidence were produced --

THE COURT: Mr. Cramer, let me ask you this question.

MR. CRAMER: Yes.

THE COURT: One of the issues here that the Court is focussed on as it relates to Zuffa's arguments is whether or not they sought to reopen discovery or made statements about it. I mean, you've heard I asked Mr. Yates this question, but I'm going to ask you a different question.

But the record is very clear. Yes, there was a delay here for reasons stated by the Court. I don't recall the exact record in Johnson as it relates to all of the, I guess, requests for reopening discovery in Le. I know there was no request, obviously a motion, in this case. But I want you to comment on that.

MR. CRAMER: First of all, the first time that Zuffa said they wanted to reopen discovery in Le was in August of 2023. Second, they have -- they never said, prior to August of 2023, that any of the discovery they were talking about was relevant to the damages or liability in Le. They said it was relevant to injunctive relief, but of course Your Honor has put

the injunctive relief off until later.

So they have never publicly stated until August 2023 that any of this evidence that they said they wanted was relevant to Le, liability, and damages.

THE COURT: So let me ask you this other question --

MR. CRAMER: Yes.

THE COURT: -- related to that, Mr. Cramer. If I'm going to be deciding injunctive relief, the motions for that are going to be filed and fully briefed a little bit later, why wouldn't I reopen discovery for deciding the issue of injunctive relief currently? And so there's certainly an issue about, sort of, the efficiency of doing that.

If the plaintiff, which they are asking for some injunctive relief, why wouldn't I reopen discovery for that?

MR. CRAMER: So, Your Honor, what our concern is is to have a trial on liability and damages in Le starting on April 8th, 2024. And what we don't want in that trial is apparently what Zuffa is intending to do, start lobbing in out-of-context statements to investors, apparently, from PFL in 2022 and then argue, either through their expert or otherwise, that that somehow shows Zuffa did not have monopsony power in 2012.

THE COURT: Well, I want to be clear about one thing, Mr. Cramer. We have multiple issues that are going on.

MR. CRAMER: Yeah.

THE COURT: I have not decided an issue as relates to a

motion in limine. Even if I were to find that potentially this is not sufficiently-relevant information for Zuffa to reopen discovery considering all of the factors, it doesn't necessarily mean that I wouldn't allow them to present some evidence of this. We have to have a separate discussion about what's admissible and relevant even if we were to go forward on April 8th date, and I understand your concerns, but I just want to be clear, to the extent that the Court would decide about reopening discovery one way or the other, there would still be a separate discussion that would need to be had about the relevance of it.

I may decide, for example, to reopen discovery, but then decide after seeing the discovery that it's in fact not relevant in hearing the testimony. But I want to be clear that from my perspective those are separate issues. What gets admitted into trial versus what would be permitted in discovery are two separate things. There are plenty of situations where discovery's allowed, and then once the discovery's produced the Court may make the determination this is relevant, but that's not relevant so you can't bring it in. So I want to focus really on the reasons that we are here.

And I want to go back to this issue about injunctive relief. What type of injunctive relief essentially would the plaintiffs be seeking now? And I know that -- this has been briefed a little bit, but because I want to talk about that today as it relates to reopening discovery. What is it that

you're going to be seeking?

MR. CRAMER: So, first of all, Zuffa can take any discovery it wants or needs in the context of the Johnson case now. So -- and it can be adjudicated later that that discovery is relevant to injunctive relief in Le.

Second, the injunctive relief we will be seeking in Le is some form of restricting the ability of the UFC to use never-ending contracts, essentially, so some kind of cap on the amount of time that those contracts can last. Apparently --

THE COURT: I'm sorry. Would these be contracts that were initially agreed to in the class period or subsequent contracts?

MR. CRAMER: No, the injunctive relief is about current market conditions.

THE COURT: Okay. All right.

MR. CRAMER: So that's why we think the injunctive relief --

THE COURT: But it would only apply -- if you're talking about Le -- are you seeking injunctive relief for both Le and Johnson? Are you seeking injunctive relief for just one? Because certainly, I mean, you could at least make the argument that you would like it to apply to people in Johnson, but that would be a little bit premature.

But are you talking about for injunctive relief the class members for Le, and there may be some carryover, but I

don't think there would be necessarily -- well, I take that back. There probably is for those two classes. Are you just talking about those class members or are you talking about other people?

MR. CRAMER: So the injunctive relief in Le would apply across the board to Zuffa as a whole, is what we would ask for, and we would also ask for that in Johnson. It would be a generally-applicable injunction against the UFC that would say that they could no longer engage in the same contracting practices that they current -- currently engage in. And it would apply equally to the class members in Le and the class members in Johnson.

Unfortunately, because the class in Le goes through June 2017, a lot of those fighters are now retired or no longer fighting with the UFC. So it's going to be more relevant to the current fighters who are the class members in Johnson. And that's why we think it makes more sense to handle the injunctive relief claim in conjunction with the Johnson case. Let's -- let's do the Johnson case, which goes from July 2017 to the present, and let's do the Le injunctive relief claim with the Johnson case because injunctive relief has to do with current market conditions and current conduct.

THE COURT: Why wouldn't I then just bifurcate the injunctive relief? It would seem to me that the injunctive relief as it relates to the fighters in Le would be different,

in part, because of where we are procedurally. The class has been certified, right. The request for the appeal has been denied. We're on a track to decide dispositive motions one way or the other to figure that out, and depending on how they're decided, the case moves forward I guess, or not.

But assuming that it moves forward and you're asking for injunctive relief, why wouldn't I simply then just bifurcate the relief and say, you know, "If you're going to ask for relief for the Le class, then you have to separate that out"? Because if you're going to ask for both of them at the same time, then it seems to me that it might make sense to reopen discovery. Because I don't know how you're going to be simultaneously asking me for injunctive relief for a combined class, but then asking me to restrict discovery for that combined class to a limited period of time.

MR. CRAMER: Your Honor makes a good point, and I think it probably does make sense to bifurcate the liability and damages class in Le and the injunctive relief claim in Le. I think that does make sense.

THE COURT: No, I don't know that, Mr. Cramer, you could argue to me that we want to have injunctive relief that applies now because we -- it applies to current conditions and then simultaneously argue to me we don't think the current conditions matter for liability damages, right --

MR. CRAMER: Yeah. No, you're -- you're right.

THE COURT: -- for the bout class.

MR. CRAMER: We recognize that. What we want -- what we think is -- we think Your Honor makes an excellent point. We think the orderly way to do this is to try the liability and damages claim in Le in April of 2024, put the -- and bifurcate, put the injunctive relief claim in Le together with Johnson and try that separately. That makes eminent sense. Then the damages and liability is through 2017. What happens after 2017 is not relevant in our view. No -- no more discovery is needed.

I mean, you'll recall, Your Honor, there were 12 years of discovery in Le from 2005 to 2017, right. There's no -- there's no case that says that in order to prove a monopoly or monopsony you need more than 12 years. Dr. Topel doesn't say that. None of the experts say that. No cases say that.

The authorities we cited to Your Honor are three or four years is probably enough to show durable monopoly or a monopsony power. So it's a self-contained case. There's -- there's nothing more that plaintiffs need to show after 2017 if we bifurcate the injunctive relief. So we think that's sensible.

THE COURT: When you say "bifurcate," what I was saying was bifurcate the two classes in terms of the cases; that if you're asking for injunctive relief, right, for Le class members, right, that your argument would have to be based upon

what occurred during the class period they should be permitted to be able to get out of contracts or change what the terms were or ask the Court to modify them. That's very different than you saying, "Well, we want to bifurcate it and have the damages for Le and then have the injunctive relief for Le and Johnson decided together." That's not what I'm talking about.

I'm talking about separating out the injunctive relief for Le and Johnson because, again, I don't know that it's consistent to argue to me that that claim should be bifurcated, but still those two classes should be considered together because that would mean that the discovery regarding that would cover 2006 to 2023, right?

MR. CRAMER: You're right, you're right, Your Honor. I mean, we're in this situation where I think both sides agree that injunctive relief claims are about current market conditions. And it would be -- make no sense to try to talk about 2016 contracts and change those if Zuffa doesn't use them anymore, right.

THE COURT: Right.

MR. CRAMER: But what we -- what we don't want from Your Honor in terms of both Le and Johnson and injunctive relief is to change -- is for some business practices that are being used today to change.

So we agree, Your Honor.

THE COURT: Yes, but how would that affect -- if many

of these fighters are retired or not still fighting, I mean, what injunctive relief would the class members in Le even be seeking then?

MR. CRAMER: They're seeking -- I mean, they have standing because of the law that says --

THE COURT: Right.

MR. CRAMER: -- that if they are fighting at or in the market at the time they filed the case, they have standing. But the fact -- it's like in a college case what happens is if you're a senior and you bring a case against your college and you graduate, you can still seek injunctive relief.

THE COURT: No, I've already found it. I already found the issue of standing.

MR. CRAMER: Right, so --

THE COURT: So the issue really, though, even injunctive relief has to be very targeted and specific. And even if you have standing, it doesn't mean that you are going to be entitled to whatever injunctive relief you seek.

MR. CRAMER: Of course.

THE COURT: Right. The question is what would you be seeking for fighters who are predominantly or almost all retired.

MR. CRAMER: Right. For the retired fighters what we're seeking is money damages.

THE COURT: Okay.

And are there any class members in Le who are not retired who would be seeking other form of damages as far as you know?

MR. CRAMER: I don't standing here today. There may -- there may well be because it goes through June 2017. But most of the -- most of the -- almost all of the injunctive relief will apply to the current fighters at the UFC. The plaintiff in Le -- the plaintiffs in Le that have standing have standing to seek injunctive relief on behalf of the current fighters even if they're not in the class in Le. That's what we'll argue in what we're going to file in December.

But we agree that will not be what we're seeking at trial in Le in April of 2024, and that's an issue that can be handled later.

THE COURT: And when would we expect all of the discovery in Johnson to be completed?

MR. CRAMER: Discovery in Johnson is supposed to end in February of 2025.

THE COURT: Right.

MR. CRAMER: I mean, it -- it -- I mean, one of the concerns we have about the reopening of discovery in Le is that it cannot be cabined to just looking at a few competitors in 2022 or 2023. As Your Honor has pointed out, we also need discovery from the UFC. We need from their bankers and their investors. As we saw at the class hearing, a lot of the bankers

and investor materials are some of the best evidence of what Zuffa is telling itself about its own market power and how important those contracts are to be barriers to entry to competitors. And so we're going to want that discovery, too.

And, again, what Zuffa is saying is that the reason why 2022 entrants or expansion is relevant is because it says something about Zuffa's conduct. Well, we then have to know whether the conduct in Le is the same as the conduct in Johnson. It's -- Zuffa says it's a natural experiment. Well, an experiment you have to see whether -- if you're testing whether the conduct is or is not a barrier to entry, you have to see whether the conduct is the same. So what we need --

THE COURT: But, Mr. Cramer, are you saying to me that you think that what we should do is decide damages in 2024 and then wait until 2025 to decide injunctive relief for Le?

MR. CRAMER: Oh. In -- for Le what I'm saying is we don't need anything more. The record is closed.

THE COURT: I'm talking about for injunctive relief --

MR. CRAMER: In Le, yes. Yes. I am saying --

THE COURT: Are you saying to me that what the schedule should be is damages in April of 2024 if the trial goes forward?

MR. CRAMER: Yes.

THE COURT: Right.

And if there are damages awarded, then we -- because if there aren't damages awarded, right, there would be no

injunctive relief -- well, likely would be no injunctive relief that would be ordered potentially.

But what you're suggesting to me is that if I allow the trial to go forward in April 8th after having potentially denied the motions for summary judgment, that you still wouldn't seek injunctive relief until the following year for the Le class?

MR. CRAMER: I think that's right. We would seek injunctive relief in conjunction with the Johnson trial. I think that would be the most orderly way to handle it because we need discovery of the conduct through the present. I think that's -- that's the way it would have to happen. We're open to other ways of handling it.

THE COURT: Well, I don't know honestly, Mr. Cramer, that -- I have to think about that. Because it seems to me that you may have to make a choice about how much injunctive relief you seek for the Le class if you're asking me to hold it off a year. That -- that's a substantial period of time for a class and for the case. And that I think goes to one of the arguments that the defendant has made about efficiency.

And so as you're saying this to me, I'm concerned --

MR. CRAMER: Okay.

THE COURT: -- that asking me to decide the injunctive relief for Le a full year after any potential trial would potentially be very inefficient. I'm not saying the Court couldn't potentially do that. I think there are reasons for the

Court to do that.

But I don't know that there would be an issue. And potentially, again, if there was even an award after a jury trial, you would have a very sticky, messy situation as relates to the finality of a judgment and the potential appeal of that judgment as well.

And so as you're saying this, I'm thinking about how this would work, and that seems to me to be a little bit potentially problematic, Mr. Cramer.

MR. CRAMER: So, Your Honor, we hear you on that. Our priority is to go to trial on damages and liability in Le in April of 2024 if Your Honor denies the motion for summary judgment. If Your Honor thinks that -- that would not be efficient to then do some kind of injunctive relief hearing within a month or two of the damages verdict, then we could try to do that, or if Your Honor thinks that, perhaps, injunctive relief should just be handled in Johnson and not in Le at all --

THE COURT: Right.

MR. CRAMER: -- that might be another approach.

THE COURT: What I'm saying to you is I'm just putting you on notice --

MR. CRAMER: Yes.

THE COURT: -- as I think about this, which is that if you're asking me not to reopen discovery and to move forward with the case, assuming you prevail on a motion for summary

judgment at least as it going to trial, I'm not sure that I would permit an injunctive relief claim to move forward for the Le class.

MR. CRAMER: Okay.

THE COURT: Because I don't think that you can ask me to do both of those things. I think that they are potentially -- and I'll look at -- again, I'm going to look back over the schedule, but I think that they are potentially inconsistent with one another and they disadvantage the defendant and force them to defend both of those claims in that way.

MR. CRAMER: So, Your Honor, that is perfectly understandable. We will look at that. It is possible then -- we will consider it, talk about it. But it may make more sense to deal with the injunctive relief claim in Johnson and abandon the injunctive relief claim in Le, but again --

THE COURT: Look, I'm not requiring you to do one thing or the other. What I'm saying to you is those arguments to me are inconsistent with one another to ask me -- to say, "Well, we want you to keep this potential date if we prevail all the way through here, but we want you then to wait another year for an injunctive claim." That doesn't make sense to me.

MR. CRAMER: Right.

THE COURT: And so I don't know if you need to -- if you would need to speak with your clients about that or how you

want to proceed, but I don't know that, to me, I would deny the motion if you're still going to be pursuing injunctive relief. It just doesn't necessarily make sense for the reasons that I have outlined because --

MR. CRAMER: Right.

THE COURT: -- you're going to be seeking all sorts of information about current conditions. And if we're doing that, why aren't we doing that once and then trying the case? We could still try the case in 2025 when that -- when that discovery's ended, but I understand that that's not what you want --

MR. CRAMER: Right.

THE COURT: -- and that's not what your clients have wanted. And so I'm just letting you know that because I don't know that those two positions can be maintained.

MR. CRAMER: That's fair. And now, recall, that in Johnson discovery is going on right now. But I understand Your Honor loud and clear. I can tell you that our priority is to have a trial in April of 2024. We think that is the best way to help resolve this case and both cases for -- and -- and that is our priority.

So we will confer and -- and provide Your Honor -- we have a motion due regarding injunctive relief in December. We can tell Your Honor what -- we can give Your Honor information --

THE COURT: Well, I'll tell you what I'm likely to do --

MR. CRAMER: Okay.

THE COURT: -- potentially is I will think about -- I'm going to have Mr. Yates come back up and answer some questions. And what I'm likely to do is issue -- because I want the issue of the reopening of the discovery to be decided either today or tomorrow. I'm not going to put this off.

So in my order I would simply say, Mr. Cramer, if I decide to deny the motion, right, then that also means that the Court would not permit injunctive relief to be based upon anything other than the discovery that's been obtained in Le, which might effectively preclude it, and that then the plaintiffs could seek to ask me to reconsider my order if I'm denying the motion after meeting and conferring with their clients.

So if I were to rule in your favor, I would give you potentially the option to speak with your clients and ask for me to reconsider that and move the trial date if you want me to do that. But I'm not going to -- if you're going to prevail, I'm not going to both keep the trial date and push injunctive relief out for a year. That's not going to happen, right. So you may have to make a choice.

MR. CRAMER: Okay. That -- we understand, Your Honor. You've been crystal clear. Appreciate it.

THE COURT: Okay.

Mr. Yates.

MR. YATES: Sounds like you wanted me back up, Your Honor. I'll come on up.

THE COURT: Well, again, I wanted to give you an opportunity to respond. You heard the question I asked Mr. Johnson [sic] because I don't think -- and you don't have to comment on this. Obviously you heard the Court -- that the plaintiffs can't be arguing both for injunctive relief until 2025 and a trial date.

That being said, injunctive relief is obviously different than damages in this case. And so I wanted to give you an opportunity to be able to respond to some of the arguments that Mr. Cramer made because obviously, as I indicated to Mr. Cramer, I want to decide the motion to reopen today or tomorrow. I just don't think that we should delay that anymore. And so if you want to be able to respond, you can.

MR. YATES: I appreciate that. Thank you, Your Honor.

I think the -- you know, we're fine going to trial in April of 2024 as long as we get the discovery. And then understand that Your Honor may -- may want to deal with in limines downstream. I understand that and appreciate that and respect that.

I do think that the notion that we should be waiting a year to then think about injunctive relief in Le doesn't make

any sense from an efficiency standpoint for the Court and the like. You know, we've -- we've argued for a long time that the most efficient thing is to consolidate the cases and to just have one trial.

Respect Your Honor's views on that and -- you know. But I'm not sure they can just abandon their injunctive claims today, but the arguments I've heard all suggest that Your Honor --

THE COURT: Well, I could just decide that the injunctive claim can't proceed. They don't have to abandon it. I could simply say if they're pursuing the claim, they're pursuing their damages claim, right, that they can't pursue an injunctive claim later, which is why I said that to Mr. Cramer.

I'm not going to --

MR. YATES: Right.

THE COURT: I agree with you. As I said, it makes no sense --

MR. YATES: Right.

THE COURT: -- to have them both go forward in this way, right. So that's not going to happen, right.

But I do want you to understand that I may still decide that I'm not going to potentially reopen discovery. And Mr. Cramer made some arguments about that, and I want you to focus on that --

MR. YATES: Sure.

THE COURT: -- because, as far as I'm concerned, that is sort of the focal issue here.

MR. YATES: Perfect.

THE COURT: And so I want you, again, to talk to me, Mr. Yates, about two things. One is, sort of, again timing issues. Partly it seems to me that there was simply a strategic decision not to file a motion to reopen discovery, that you were essentially -- and, again, you weren't involved in the case. I'm not saying you, per se.

MR. YATES: Understood.

THE COURT: But that your client made a decision strategically to wait to see my order, then to see if the order could be appealed, and when your client didn't prevail on the certification and didn't prevail on the request for the appeal, then to seek discovery. Typically that type of a strategic decision would not be recognized as good cause or excusable neglect. And notwithstanding, again, the issue of the time that it took for me to decide that, but I was actually, as I said in the record, very clear that the reason why that was happening was because I was considering *Olean* and the review of that as it applied to the facts in this case and that that would take some time for me to apply.

So it's not even as if the Court was opaque about, sort of, what was the nature of the delay, right. It was very clear. I said, "I am inclined to grant the certification." Then we had

a status conference where I said, "There are these cases that are pending that I think are directly relevant." Those cases were decided. And then after that, having gone through the record which took some time, the Court issued its certification order. So it's not even as if your client was in the dark as to what was happening.

MR. YATES: Right.

THE COURT: Right. And so, again, I know you're coming to this a little bit later, but why wouldn't I consider that a strategic decision?

MR. YATES: It certainly was not, Your Honor. And Mr. Cramer is just dead wrong, and I was hoping that the plaintiffs would concede that they were wrong on this point, but they have not so I'll go through it.

He says that the first time that we asked for merits and damages discovery in Le was in August of 2023. That's what he just told Your Honor. If Your Honor looks at Page 3 of our brief, back in 2021 and 2022 we said the two actions should be consolidated and discovery should proceed promptly in this action as well as to bring the discovery in Le current.

THE COURT: No, I guess what I understood from Mr. Cramer -- because I agree that that was what was requested and I recall that being requested. We in fact had hearings about that, obviously -- is a motion. So I think there's a difference obviously between making that argument which was made

to me as it relates to the consolidation and the motion in Le. I think that the record's fairly clear that there was mention of joint discovery for the purposes of deciding whether or not to consolidate the cases, and that occurred prior to August of 2023.

And so you don't need to address that because I took Mr. Cramer as saying essentially a motion rather than discussions.

MR. YATES: You know, we did file documents with the Court saying that discovery should be reopened in Le --

THE COURT: Right.

MR. YATES: -- in 2021 and 2022 and 2023. I don't think a party can be any more diligent than that. We -- you know, it wasn't me, it was Mr. Isaacson, you know, having conversations with you made that clear in 2022. And Your Honor decided to stay discovery in Johnson.

We accept that. But once Your Honor has decided that, there's not much more that -- that a litigant can do. We raised it multiple times with the Court, and then -- and then we -- we -- Your Honor, we raised it again when the class certification decision came down. And then Your Honor set October 24th to file it. We filed it at the date Your Honor said was -- was acceptable.

So I just don't know what more a litigant can do. We raised it in filings with the Court saying that discovery should

be reopened in Le to bring things current and to reflect current market conditions.

The other point I would like to make, Your Honor, Mr. Isaacson reminded me that the reason that there are no models of monopsony power in the class certification record is because that was conceded to be a common issue that -- the issue of monopsony. So, you know, that's -- that's -- I just wanted to make that clear.

THE COURT: Tell me what you mean by that, Mr. Yates. Because when you say "a common issue," the case actually evolved. Initially the plaintiffs were arguing monopoly and monopsony.

MR. YATES: Right.

THE COURT: And then their argument shifted slightly to focus on monopsony --

THE COURT: Correct.

THE COURT: -- with monopoly being supportive of the monopsony or the alleged monopsony power. So I guess I want to make sure I'm understanding --

MR. YATES: Just I don't believe the experts were speaking to, sort of, how you -- how you would model out monopsony-type behavior in the way that Your Honor was I think looking for because it was an issue that was ultimately going to be common.

But in any event, what I think -- here's what I've

heard, Your Honor. I've heard lots of statements by the plaintiffs that discovery is open in Johnson. You know, if Your Honor were to decide to deny the motion to reopen -- and I respectfully submit Your Honor should grant the motion to reopen. We can get this done. We can try the case in April if that's Your Honor's choice, or if Your Honor wants to combine the trials, that's fine as well.

But if Your Honor denies the motion to reopen, Your Honor should at least allow us to use Johnson discovery in Le.

THE COURT: So tell me -- because that's the other thing I want to ask about. What Johnson discovery would you be using?

MR. YATES: The same stuff that I said we would be seeking in -- in -- from the third parties and the like. I mean, we would want to put that evidence in and let the trier of fact, assuming Your Honor denies the summary judgment motion, evaluate that evidence.

THE COURT: Can you give me an example of the type of information that you would be talking about? Because, again, it seems to me part of this would be essentially supplementing expert reports. So what I would expect might happen, right, and I wouldn't hold this against you all, is all of a sudden there would be expert reports that would be supplemented in the middle of the Johnson discovery period potentially if the case is going to trial as a way to admit them.

Mr. Yates, that's the type of strategic decision that seems to me is perfectly -- if the Court were to allow it, would be acceptable. I'm not saying you would do that, but it seems to me that really what you're asking me to do is to allow you to supplement information as relates to your expert's report and about current market conditions --

MR. YATES: Well --

THE COURT: -- and to say essentially what you've said. Fighters have left. Competitors have risen. This shows, sort of, backwards looking that we never had the power that they said that we had and, see, if we had, this would have never happened.

Now, your experts didn't say that at the evidentiary hearings. They didn't even say that two years later. But you're saying they can say that now and, again, we can talk about whether or not that's appropriate or not. And what I understand you to be saying is, "We would like to be able to use whatever we can acquire between now and when the case went to trial from our experts and from competitors to be able to argue these points to the jury if the case goes to trial." Is that right?

MR. YATES: Well, I certainly -- I would love to be able to -- I would love to be able to supplement expert reports to reflect current market conditions, but I think that probably would require Your Honor to grant the motion to reopen.

THE COURT: Right.

MR. YATES: But, you know, discovery -- we're going to be taking discovery in Johnson. These cases are obviously -- they are overlapping. They're intimately related. The alleged conduct supposedly, according to plaintiffs, continues.

And so if we -- if we're able to discover information from competitors as part of Johnson, all I'm saying is that that should be part -- should be usable at a Le trial. Now, Mr. --

THE COURT: But I guess I'm -- okay.

MR. YATES: Certainly.

THE COURT: You have to be more specific, Mr. Yates.

MR. YATES: Okay.

THE COURT: What information specifically? Let's set the experts apart. Let's move the experts apart. What other information would you be seeking? Because it sounds like what you were saying is you would be seeking essentially information from competitors to say, you know, "We were actually able to compete with Zuffa, and notwithstanding their market power, we were able to poach fighters. We were able to use their own business model, and we could resist their efforts to acquire us or to intimidate us."

MR. YATES: Yeah, I think that would --

THE COURT: Right?

MR. YATES: I think that would be -- let me step back. By the way, I just noticed the quote from the Abraham Lincoln that's on the lectern. And obviously I far exceeded the 135

seconds.

But I think that in my experience jurors are -- you know, they're going to hear about econometrics, and a lot of that is going to go over their head. What is going to be powerful to them is Scott Coker, the head of PFL, other competitors saying directly to the jury, "We were not restricted. Our fighters are as good as the UFC's fighters."

Also, what else is probative? They pay less than the UFC by and large except for when they take stars. So all of that information, I think, is going to be incredibly powerful to a trier of fact, a jury, who may or may not understand econometrics, but will understand hearing directly from the competitors that they are not minor league. They believe that they are competitors, and they have not been restricted or restrained in any way.

THE COURT: Okay.

All right, Mr. Yates. Give me a moment. I just need to ask Mr. Cramer some questions.

MR. YATES: Sure. Thank you, Your Honor.

THE COURT: I'll come back to you.

So, Mr. Cramer, I want you to respond to this potential situation where I say, "I'm not reopening discovery, but if defendant or plaintiffs find things in Johnson that they want to use, they can petition the Court to use it. But I'm not going to categorically exclude it." What's your position as relates

to that?

MR. CRAMER: Our position is there is information that's being produced in Johnson. If they want to file -- they want to put a document on their witness list or on their exhibit list for trial, we'll deal with it before trial.

Our point, now, is that the parties need to be preparing for trial in April 2024. We're briefing summary judgment. And then we're going to prepare for trial. The record needs to come to a close. It has to close. We need to be able to prepare --

THE COURT: So let me ask you this question, Mr. Cramer, because one of the things that is sort of creeping in a little bit here --

MR. CRAMER: Yeah.

THE COURT: -- is what the trial arguments are going to be.

MR. CRAMER: Yeah.

THE COURT: And certainly one of the things that has happened with me in cases is I've seen someone argue something in their trial brief, but I say, "Well, wait a minute. You can't have argued something as relates to me issuing a particular discovery order and then turn around and use that particular order in a different way to be able to make an argument based upon, for example, a lack of information at a trial."

So you're not saying, for example, that you would argue on behalf of your clients, "Well, they haven't been able to since demonstrate that competitors have entered the market," or things along those lines at a trial in this case that would suggest that had they had that information they could argue it to the jury?

MR. CRAMER: Our clients are not going to themselves initiate putting in any evidence that's not already in the record in Le.

THE COURT: Okay.

MR. CRAMER: We do not need it. We show durable monopsony power from at least 2010 to 2017. There's no expert, not Dr. Topel, not Dr. Singer, not any expert in this case has said that you need more than seven years of showing of foreclosure of monopsony power to prove a Section 2 case. So --

THE COURT: So are you saying to me, because I want to be clear.

MR. CRAMER: Yes.

THE COURT: Because we dealt with a couple of issues here. Are you saying to me that if this case were to proceed to trial, the plaintiffs would not be seeking to add any information, if I were to deny the motion to reopen, beyond the discovery that has been provided in Le?

MR. CRAMER: Well, we won't unilaterally disarm. If Zuffa wants to put it in --

THE COURT: No, that's not -- right.

MR. CRAMER: Oh, okay. Yeah. Then the answer to that is we will not.

THE COURT: You're plaintiffs. You present your case --

MR. CRAMER: Yes.

THE COURT: -- right, and you argue it. I'm not saying that -- they obviously want to use it. That's why they filed these motions, right.

MR. CRAMER: Yeah.

THE COURT: That's not really the issue, right. They want this information to be provided.

MR. CRAMER: Yes.

THE COURT: And it seems to me that if I were to decide this in your favor, that you couldn't then turn around and use that to your advantage. And I'm asking you that now because there's no point of going through this if you're going to be raising arguments at trial that effectively implicate recent conditions or in any way suggest that that would be relevant information. Because if you're doing that, then obviously I would grant the motion to reopen.

And I want to be clear about this on the record, right. If you're saying to me now directly, "We will not use any information if we were to go to trial, other than discovery in Le," is that what you're telling me?

MR. CRAMER: That is what I am telling you.

THE COURT: All right. Okay.

All right. Thank you, Mr. Cramer.

MR. CRAMER: Thank you, Your Honor.

THE COURT: So here's what we're going to do for right now. I'm going to go back and look at this record a little bit and decide whether or not I can decide this today. I really don't want to drag this out. So we're going to take a short, little break. All I would say to you is to stay close to the courtroom. And maybe 15, 20 minutes or so. Maybe around that timeframe. But I'm likely to come back in and give you my ruling or let you know how we're going to proceed. Okay?

COURTROOM ADMINISTRATOR: Please rise.

MR. SAVERI: Excuse me, Your Honor. Can we stay in here?

THE COURT: Oh, no. You don't have to stay in the courtroom, but just be close so that if Ms. Smith needs to find you, right, she doesn't have to chase around the hallway to find you.

MR. SAVERI: I plan on remaining in my seat, if that's possible.

THE COURT: Okay. All right.

MR. CRAMER: Thank you, Your Honor.

(Recess taken at 12:52 p.m.)

(Resumed at 1:07 p.m.)

THE COURT: Please be seated.

So we are back on the record here. I'll note the presence of all counsel in this case.

So here's what we're going to do. I'm going to deny both motions in this case to reopen and to share discovery. In this case I don't find based upon my review of the record and particularly the experts, including defendant's experts, that the discovery's likely to lead to relevant information related to damages. The information that has been gleaned in the expert reports themselves don't suggest the need for that considering the relevant testimony at the time. I think based upon the record here that the class period itself is sufficient one way or another to establish whether or not monopsony power existed and without consideration for information beyond the class timeframe.

I also find that plaintiffs would be prejudiced by any further delay as it relates to the reopening of the discovery, in part, because of the nature and amount of the discovery that the defendants seek.

The Court doesn't find this to be a tailored or narrow request. It actually finds it to be a quite broad request, which could lead to several months of discovery well beyond the trial date that the Court has set in this case.

Trial in this case is imminent notwithstanding the fact that there are dispositive motions in this case. The Court in

essentially looking at the nature of those motions and having considered the evidence in this case finds that it's quite likely the case will proceed to trial and certainly likely enough that the trial date must be considered in the context of these motions.

I also find that the defendants have had sufficient -- more than sufficient time for the discovery and the discovery that they seek was available to them and could have been provided at the evidentiary hearing. And the Court did allow for supplementation at that time which would have been the appropriate time to continue to request this, but there was not a further request for that supplementation.

For all of those reasons, the Court is going to deny both motions in this case. I am going to restrict the plaintiffs in this case to using just the discovery from Le in their case-in-chief. I also wanted to be clear that my decision about these motions is not necessarily dispositive of evidence that can be presented. And what will happen as this case proceeds to trial, as I think it likely will, is I'm going to ask the parties to submit trial briefs early enough that should there be issues that would suggest the need for certain types of discovery outside of Le to be used, then we'll consider it at that time.

But I want to be clear, Mr. Cramer and Mr. Yates and Mr. Isaacson, I'm not making a categorical decision about

admissibility as it relates to trial at this time. I find that those decisions have to be made in the moment and potentially either side could open the door to information. And so I'm saying that to the plaintiffs so they can be particularly aware of that.

The other thing is, to the extent the plaintiffs seek injunctive relief in Le, it will be limited to the discovery in Le itself. The Court will set a hearing on injunctive relief in Le after the trial in this case. Obviously if the defendant prevails at trial, then that will potentially be dispositive of the injunctive relief. Either way, Mr. Cramer, the plaintiffs will be limited to the record as it relates to injunctive relief.

Now, that may not provide for the nature of the relief that you seek. I will consider it at the time. And if you want me to reconsider allowing for information beyond the class period to be used for injunctive relief in Le, you can ask -- you can file a motion for reconsideration, but I will tell you that will lead to the trial date in this case being moved. And so I want to be clear about that. You certainly have leave to seek reconsideration of my order as relates to injunctive relief, but if you seek reconsideration and I grant it, I will move the trial date back to 2025. So that's something that I want to be very clear about in this case.

The other thing I wanted to talk with you all about is

preparation for trial. As I've indicated, based upon the record that I have and based upon the Court's certification order and looking at the motions that have been filed, I think it's quite likely this case will proceed to trial. This will be a lengthy trial, and so I think it's important for us to think about scheduling issues.

One of the issues that I anticipate is going to happen is we're going to have a fair amount of work dealing with evidentiary issues regarding the experts and other evidence that may come in. And so what I'm going to ask you all to do is to meet and confer to set a schedule, a trial schedule, regarding deadlines, right. I would like to be able to resolve all evidentiary issues at least a month before trial, which means you all will have to file briefs and motions probably starting in January, right.

I'm going to require you to file trial briefs in this case, and you'll have to file and prepare your exhibits and file a joint pretrial order. I'm going to ask you to meet and confer about setting that, the deadlines for that.

At some point we're going to have to have an evidentiary hearing I would fully anticipate as it relates to exhibits in the trial and in particular expert testimony. So you all should meet and confer about that.

Any questions about the Court's order today? I am going to memorialize it in a minute order, but I'm not going to

issue a separate written order. My reasons outlined here today on the record as well as the reasons that I will include in the minute order will be the final order of the Court as relates to these motions.

Any questions, Mr. Cramer, about what the Court has ordered today?

MR. CRAMER: No, Your Honor. Thank you.

THE COURT: Mr. Yates, any questions about that?

MR. YATES: No, Your Honor.

MR. ISAACSON: Your Honor, no questions, but just, you know, I had previously informed you I have a trial date on the same -- on the same date. And there are motions pending in that case.

THE COURT: As I understand it, Mr. Isaacson, that case is not as old as this case. This case is much older than the case at least that I thought that you had identified. I'm happy to reach out to the Court in that case to let the Court know why I'm not going to move the trial date, but I don't intend to move the trial date, in part, because of my own trial schedule. I can't try the case much later without it pushing months later in my own schedule, and so the window that I've given you is the window that I have. But I'm not going to move the trial date at this point in time.

MR. ISAACSON: All right, Your Honor.

THE COURT: All right. Mr. Cramer?

MR. CRAMER: We saw Your Honor granted the motion to start the notice process.

THE COURT: Yes.

MR. CRAMER: So we were going -- we're going to start that, and the notice itself has the April 8th trial date. And we're going to go forward with that. I just wanted to confirm that with the Court.

THE COURT: Yes.

MR. CRAMER: All right. Thank you, Your Honor.

THE COURT: All right. So anything else we need to do today from counsel? Anyone?

MR. CRAMER: No, Your Honor.

THE COURT: Anyone?

MR. YATES: No, Your Honor.

THE COURT: All right. We'll be adjourned. I'm going to stay on the bench for a few moments. Thank you.

(Whereupon the proceedings concluded at 1:15 p.m.)

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COURT REPORTER'S CERTIFICATE

I, PATRICIA L. GANCI, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: November 21, 2023.

/s/ **Patricia L. Ganci**

Patricia L. Ganci, RMR, CRR